

### Subpart 2805—Terms and Conditions of Grants

#### § 2805.10 How will I know whether BLM has approved or denied my application?

(a) BLM will send you a written response on your application. If we do not deny the application, we will send you an unsigned grant for your review and signature that:

(1) Includes any terms, conditions, and stipulations that BLM determines to be in the public interest. This includes modifying your proposed use or changing the route or location of the facilities;

(2) May include terms that prevent your use of the right-of-way until you have an approved Plan of Development and BLM has issued a Notice to Proceed; and

(3) Will impose a specific term for the grant. Each grant that BLM issues for 20 or more years will contain a provision requiring periodic review at the end of the twentieth year and subsequently at 10-year intervals. BLM may change the terms and conditions of the grant as a result of these reviews in accordance with § 2805.15(e) of this subpart.

(b) If you agree with the terms and conditions of the unsigned grant, you should sign and return it to BLM with any payment required under § 2805.16 of this subpart. BLM will sign the grant and return it to you with a final decision issuing the grant if the regulations in this part, including § 2804.26, remain satisfied. You may appeal this decision under § 2801.10 of this part.

(c) If BLM denies your application, we will send you a written decision that will:

(1) State the reasons for the denial (see § 2804.26 of this part);

(2) Identify any processing costs you must pay (see § 2804.14 of this part); and

(3) Notify you of your right to appeal this decision under § 2801.10 of this part.

#### § 2805.11 What does a grant contain?

The grant states what your rights are on the lands subject to the grant and contains information about:

(a) *What lands you can use or occupy.* The lands may or may not correspond to those for which you applied. BLM

will limit the grant to those lands which BLM determines:

(1) You will occupy with authorized facilities;

(2) Are necessary for constructing, operating, maintaining, and terminating the authorized facilities;

(3) Are necessary to protect the public health and safety;

(4) Will not unnecessarily damage the environment; and

(5) Will not result in unnecessary or undue degradation.

(b) *How long you can use the right-of-way.* Each grant will state the length of time that you are authorized to use the right-of-way.

(1) BLM will consider the following factors in establishing a reasonable term:

(i) The public purpose served;

(ii) Cost and useful life of the facility;

(iii) Time limitations imposed by licenses or permits required by other Federal agencies and state, tribal, or local governments; and

(iv) The time necessary to accomplish the purpose of the grant.

(2) All grants, except those issued for a term of 3 years or less and those issued in perpetuity, will expire on December 31 of the final year of the grant.

(c) *How you can use the right-of-way.* You may only use the right-of-way for the specific use the grant authorizes.

[70 FR 21058, Apr. 22, 2005, as amended at 73 FR 65071, Oct. 31, 2008]

#### § 2805.12 What terms and conditions must I comply with?

By accepting a grant, you agree to comply with and be bound by the following terms and conditions. During construction, operation, maintenance, and termination of the project you must:

(a) To the extent practicable, comply with all existing and subsequently enacted, issued, or amended Federal laws and regulations and state laws and regulations applicable to the authorized use;

(b) Rebuild and repair roads, fences, and established trails destroyed or damaged by the project;

(c) Build and maintain suitable crossings for existing roads and significant trails that intersect the project;

**§ 2805.12**

**43 CFR Ch. II (10–1–12 Edition)**

(d) Do everything reasonable to prevent and suppress wildfires on or in the immediate vicinity of the right-of-way area;

(e) Not discriminate against any employee or applicant for employment during any phase of the project because of race, creed, color, sex, or national origin. You must also require subcontractors to not discriminate;

(f) Pay monitoring fees and rent described in §2805.16 of this subpart and subpart 2806 of this part;

(g) If BLM requires, obtain, and/or certify that you have obtained, a surety bond or other acceptable security to cover any losses, damages, or injury to human health, the environment, and property in connection with your use and occupancy of the right-of-way, including terminating the grant, and to secure all obligations imposed by the grant and applicable laws and regulations. If you plan to use hazardous materials in the operation of your grant, you must provide a bond that covers liability for damages or injuries resulting from releases or discharges of hazardous materials. BLM may require a bond, an increase or decrease in the value of an existing bond, or other acceptable security at any time during the term of the grant;

(h) Assume full liability if third parties are injured or damages occur to property on or near the right-of-way (see §2807.12 of this part);

(i) Comply with project-specific terms, conditions, and stipulations, including requirements to:

(1) Restore, revegetate, and curtail erosion or conduct any other rehabilitation measure BLM determines necessary;

(2) Ensure that activities in connection with the grant comply with air and water quality standards or related facility siting standards contained in applicable Federal or state law or regulations;

(3) Control or prevent damage to:

(i) Scenic, aesthetic, cultural, and environmental values, including fish and wildlife habitat;

(ii) Public and private property; and

(iii) Public health and safety;

(4) Protect the interests of individuals living in the general area who rely on the area for subsistence uses as that

term is used in Title VIII of Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111 *et seq.*);

(5) Ensure that you construct, operate, maintain, and terminate the facilities on the lands in the right-of-way in a manner consistent with the grant;

(6) When the state standards are more stringent than Federal standards, comply with state standards for public health and safety, environmental protection, and siting, constructing, operating, and maintaining any facilities and improvements on the right-of-way; and

(7) Grant BLM an equivalent authorization for an access road across your land if BLM determines the reciprocal authorization is needed in the public interest and the authorization BLM issues to you is also for road access;

(j) Immediately notify all Federal, state, tribal, and local agencies of any release or discharge of hazardous material reportable to such entity under applicable law. You must also notify BLM at the same time, and send BLM a copy of any written notification you prepared;

(k) Not dispose of or store hazardous material on your right-of-way, except as provided by the terms, conditions, and stipulations of your grant;

(l) Certify your compliance with all requirements of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001 *et seq.*, when you receive, assign, renew, amend, or terminate your grant;

(m) Control and remove any release or discharge of hazardous material on or near the right-of-way arising in connection with your use and occupancy of the right-of-way, whether or not the release or discharge is authorized under the grant. You must also remediate and restore lands and resources affected by the release or discharge to BLM's satisfaction and to the satisfaction of any other Federal, state, tribal, or local agency having jurisdiction over the land, resource, or hazardous material;

(n) Comply with all liability and indemnification provisions and stipulations in the grant;

(o) As BLM directs, provide diagrams or maps showing the location of any constructed facility; and

## Bureau of Land Management, Interior

## § 2805.16

(p) Comply with all other stipulations that BLM may require.

### § 2805.13 When is a grant effective?

A grant is effective after both you and BLM sign it. You must accept its terms and conditions in writing and pay any necessary rent and monitoring fees as set forth in subpart 2806 of this part and § 2805.16 of this subpart. Your written acceptance constitutes an agreement between you and BLM that your right to use the public lands, as specified in the grant, is subject to the terms and conditions of the grant and applicable laws and regulations.

### § 2805.14 What rights does a grant convey?

The grant conveys to you only those rights which it expressly contains. BLM issues it subject to the valid existing rights of others, including the United States. Rights which the grant conveys to you include the right to:

(a) Use the described lands to construct, operate, maintain, and terminate facilities within the right-of-way for authorized purposes under the terms and conditions of the grant;

(b) If your grant specifically authorizes, allow other parties to use your facility for the purposes specified in your grant and you may charge for such use. If your grant does not specifically authorize it, you may not let anyone else use your facility and you may not charge for its use unless BLM authorizes or requires it in writing;

(c) Allow others to use the land as your agent in the exercise of the rights that the grant specifies;

(d) Do minor trimming, pruning, and removing of vegetation to maintain the right-of-way or facility;

(e) Use common varieties of stone and soil which are necessarily removed during construction of the project, without additional BLM authorization or payment, in constructing the project within the authorized right-of-way; and

(f) Assign the grant to another, provided that you obtain the BLM's prior written approval, unless your grant

specifically states that such approval is unnecessary.

[70 FR 21058, Apr. 22, 2005, as amended at 73 FR 65071, Oct. 31, 2008]

### § 2805.15 What rights does the United States retain?

The United States retains and may exercise any rights the grant does not expressly convey to you. These include BLM's right to:

(a) Access the lands covered by the grant at any time and enter any facility you construct on the right-of-way. BLM will give you reasonable notice before it enters any facility on the right-of-way;

(b) Require common use of your right-of-way, including subsurface and air space, and authorize use of the right-of-way for compatible uses. You may not charge for the use of the lands made subject to such additional right-of-way grants;

(c) Retain ownership of the resources of the land, including timber and vegetative or mineral materials and any other living or non-living resources. You have no right to use these resources, except as noted in § 2805.14(e) of this subpart;

(d) Determine whether or not your grant is renewable; and

(e) Change the terms and conditions of your grant as a result of changes in legislation, regulation, or as otherwise necessary to protect public health or safety or the environment.

### § 2805.16 If I hold a grant, what monitoring fees must I pay?

(a) *Monitoring fees.* You must pay a fee to BLM for the reasonable costs the Federal government incurs in monitoring the construction, operation, maintenance, and termination of the project and protection and rehabilitation of the public lands your grant covers. BLM categorizes the monitoring fees based on the estimated number of work hours necessary to monitor your grant. Monitoring Category 1 through 4 fees are one-time fees and are not refundable. The work hours and fees for 2005 are as follows: